

**STATE WATER CONTROL BOARD ENFORCEMENT ACTION
SPECIAL ORDER BY CONSENT
ISSUED TO
BLUEGREEN PROPERTIES OF VIRGINIA
VWP PERMIT NO. 00-0237**

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1185 and 62.1-44.15(8a) and (8d), between the State Water Control Board and Bluegreen Properties of Virginia for the purpose of resolving certain violations of environmental law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Va. Code” means the Code of Virginia (1950), as amended.
2. “Board” means the State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.
5. “Order” means this document, also known as a Consent Special Order.
6. “Bluegreen Properties” means the Bluegreen Properties of Virginia certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.

7. “Brickshire” means the 1,135 acre residential golf course community owned by Bluegreen Properties and located in New Kent County, south of Interstate 64, east of State Route 155, and west of State Route 628.
8. “PRO” means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
9. “Permit” means Virginia Water Protection (VWP) Permit No. 00-0237.
10. “WEG” means the consulting firm, the Williamsburg Environmental Group, working for Bluegreen Properties on this project.

SECTION C: Findings of Fact and Conclusions of Law

1. Bluegreen Properties owns a residential golf course community, known as Brickshire which is located in New Kent County. The project includes the construction of a golf course, residential sites, five stormwater management ponds (BMP structures), road and utility crossings, and fill. The cumulative surface water and wetland impacts resulting from the construction of this master-planned project warranted the issuance of a VWP permit. The Permit was issued to Bluegreen Properties on November 2, 2001, and will expire on November 2, 2016.
2. The Permit allows impacts to 3.48 acres of non-tidal forested wetlands. Compensatory mitigation is to consist of off-site restoration and creation of a minimum of 6.96 acres of non-tidal forested wetlands at a ratio of 2:1 on a property known as Sandusky, located in Charles City County.
3. On June 3, 2002, DEQ staff met with WEG staff, the Brickshire Project Manager, and the general contractor working for Brickshire. The purpose of the visit was to perform an on-site inspection during construction activities to discuss corrective measures regarding non-compliance with the Permit observed during a previous site visit by DEQ staff members.
4. DEQ staff observed, during the June 3, 2002 site inspection, non-compliance with erosion and sediment controls at numerous locations throughout the residential community portion of the project. Part I.14 of the Permit requires that “Erosion and sediment controls shall be designed in accordance with the Virginia Erosion and Sediment Control handbook. These controls shall be placed prior to clearing and grading, and maintained in good working order to minimize impacts to state waters. These controls shall remain in place until the area stabilizes”.
5. DEQ staff observed that the permittee failed to flag the non-impacted wetlands within 50 feet of any clearing or grading. These areas were not demarcated during active construction activities. Because of failure to flag, one unauthorized wetland area within Section Q of the project had been cleared. Part I.21 of the

Permit requires that all non-impacted surface waters (including wetlands) within the project or right-of-way limits that are within 50 feet of any clearing, grading, or filling activities shall be clearly flagged or demarcated for the life of the construction activity within that area. The permittee is also required to notify all contractors and subcontractors that these marked areas are surface waters where no activities are to occur.

6. DEQ staff observed that fill/sediment at a temporary utility crossing had not been removed. The area was not restored to the pre-construction conditions, nor stabilized within 30 days that work was complete. The utility crossing was reported to be completed in the Fall of 2001. Part I.23 of the Permit requires that temporary disturbances to wetlands during construction be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas are to be stabilized within 30 days that work is complete, restored to pre-construction conditions and planted or seeded with appropriate wetland vegetation according to cover type. Any temporary fills must be removed in their entirety and the affected area returned to pre-existing contours.
7. DEQ staff observed fill/sediment in surface waters had not been removed at an area of utility line work. The utility line work was completed in the Fall of 2001. Part I.32 of the Permit that all utility line work in surface waters be performed in a manner that minimizes disturbance, and the area must be returned to its original contours and stabilized within 30 days of work completion in that area.
8. A file search by DEQ staff revealed that Bluegreen Properties failed to submit an approvable final mitigation plan on January 1, 2002. The final mitigation plan was due within 60 days of the date of issuance of this permit as required by Part I.48 of the Permit. A mitigation plan was submitted late on March 3, 2003.
9. A file search by DEQ staff revealed that Bluegreen Properties failed to send the 10-day letter notifying DEQ of start of construction activities authorized by the Permit. Part I.72 of the Permit requires Bluegreen Properties to notify DEQ by certified letter at least 10 days prior to the start of construction activities. It was reported to DEQ that construction activities started in the Fall of 2001.
10. A file search by DEQ staff revealed that Bluegreen Properties failed to submit final Plans and Specifications (P&S) for activities prior to the beginning of each component construction. Part I.77 of the Permit requires Bluegreen Properties to submit final P&S for activities authorized by this Permit prior to the beginning of each component construction or with the JPA application. The P&S were submitted to DEQ late on July 16, 2002.
11. A file search by DEQ staff revealed that Bluegreen Properties failed to submit all of the required quarterly construction monitoring reports for the year 2002. Part I.78 of the Permit requires that Bluegreen Properties submit to DEQ a quarterly construction monitoring report for the impact areas to document progress of

construction activities authorized by this Permit. Two of the four monitoring reports have been received, the report in July 2002 and November 2002.

12. DEQ issued a Notice of Violation (NOV) to Bluegreen Properties on July 2, 2002, citing the Permit violations, as listed above.
13. DEQ staff made another site visit on December 20, 2002. During that site visit staff observed continued noncompliance with Part I.14, I.23, and I.32 of the Permit. Staff observed multiple problems with the erosion and sediment control measures at various sections of the development in noncompliance with Part I.14 of the Permit; staff observed failure to restore and stabilize temporary disturbance of wetlands to preconstruction conditions within 30 days of completion of work in noncompliance with Part I.23 of the Permit; and staff observed failure to return surface waters and wetlands to original contours within 30 days of completion of utility line work in noncompliance with Part I.32 of the Permit. The violations of these conditions resulted in unauthorized sediment/fill in State waters, including wetlands.
14. DEQ issued a NOV to Bluegreen Properties on March 12, 2003, citing the Permit violations, as listed above in Section C.13.
15. On April 3, 2003, a meeting was held with Bluegreen Properties and their consultants to discuss resolution of the March 2003 NOV.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders Bluegreen Properties and Bluegreen Properties agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders Bluegreen Properties, and Bluegreen Properties voluntarily agrees, to pay a civil charge of \$19,600.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall note that it is being made pursuant to this order and shall note the Federal Identification Number for Bluegreen Properties. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and sent to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Bluegreen Properties, for good cause shown by Bluegreen Properties, or on its own motion after notice and opportunity to be heard.

2. This Order only addresses and resolves those violations specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
3. For purposes of this Order and subsequent actions with respect to this Order, Bluegreen Properties admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Bluegreen Properties consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Bluegreen Properties declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Bluegreen Properties to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Bluegreen Properties shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Bluegreen Properties shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Bluegreen Properties shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;

- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and Bluegreen Properties. Notwithstanding the foregoing, Bluegreen Properties agrees to be bound by any compliance date which precedes the effective date of this Order.
- 11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Bluegreen Properties. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Bluegreen Properties from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
- 12. By its signature below, Bluegreen Properties voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of _____, 2003.

Robert G. Burnley, Director
Department of Environmental Quality

Bluegreen Properties voluntarily agrees to the issuance of this Order.

By: _____

Date: _____

Commonwealth of Virginia

City/County of _____

The foregoing document was signed and acknowledged before me this _____ day of
_____, 2003, by _____, who is
(name)
_____ of Bluegreen Properties, on behalf of Bluegreen Properties.
(title)

Notary Public

My commission expires: _____.

APPENDIX A

Bluegreen Properties shall:

1. Comply with Part I.14 of the Permit by installing and maintaining all erosion and sedimentation control structures as required.
2. Comply with Part I.21 of the Permit by *clearly flagging or demarcating* the non-impacted wetlands within 50 feet of any clearing or grading *for the life of the construction activity in that area* as required.
3. Comply with Part I.23 of the Permit, all temporary disturbances to wetlands during construction, be stabilized within 30 days of completion of work, restored to preconstruction conditions and planted or seeded with the appropriate wetland vegetation.
4. Comply with Part I.32 of the Permit by performing all utility line in surface waters in a manner that minimizes disturbance and return the area to its original contours and stabilize within 30 days of work completion in that area.
5. Comply with Part I.78 of the Permit by submitting the quarterly construction monitoring reports as required by the Permit on February 1, May 1, August 1, and November 1.
7. Submit all documentation required by this Consent Special Order to:

Cynthia Akers
Department of Environmental Quality
Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia 23060